

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00168-16
45-003-17-1-5-00773-18
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-14-177-016.000-003
Assessment Years: 2013 and 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. James Nowacki contested the 2013 and 2017 assessments of his property located at 7037 W. 24th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals issued determinations valuing the vacant residential lot at \$13,100 for 2013 and \$11,200 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 29, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his hearing officer, Robert W. Metz. Both were sworn in and testified.

Record

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: GIS Map for 7037 W. 24th Avenue
Petitioner Exhibit 2: 2010-2013 Property Record Card
Petitioner Exhibit 3: 2015-2018 Property Record Card
 - b. The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

Burden of Proof

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
6. Because the assessment did not change between 2012 and 2013 or 2016 and 2017, Nowacki bears the burden of proof for both years under appeal.

Summary of Contentions

7. Nowacki's case:
 - a. Nowacki contends the assessment should be \$4,100. In 2011, he bought the property at an auction attended by hundreds of eligible buyers. He paid the minimum bid of \$26, which shows the property was assessed for significantly more than it was worth. According to the property record card, the county auditor had the property since 1900. That may not be accurate, which shows the county's lack of urgency in properly recording data. *Nowacki testimony; Pet'r Exs. 1-2.*
 - b. The subject property was assessed at \$253 per front foot, which Nowacki described as an "extraordinary" rate, given that other lots in a similar assessment neighborhood (Neighborhood 2548) were assessed at \$64 per front foot. According to Nowacki, there is no functional difference between the two neighborhoods; the dividing lines are arbitrary. Although the subject lot is deeper than the other lots, that fact does not warrant the substantial difference in rates. *Nowacki testimony; Pet'r Exs. 1-2; Metz testimony.*
8. Assessor's case:
 - a. The Assessor contends Nowacki failed to offer substantial evidence to support the value he is seeking. He did not offer any specific evidence to compare the subject neighborhood to Neighborhood 2548. *Metz testimony.*

Analysis

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2017 assessments. We reach our conclusion for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2017, the valuation dates were March 1, 2013 and January 1, 2017, respectively. I.C. § 6-1.1-2-1.5(a).
- c. Nowacki failed to present any probative market-based evidence to support his requested value. Conclusory statements are of no value to us in making our determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. We disagree with Nowacki’s claim that his purchase of the property at auction established its market value. A property’s sale price can be compelling evidence of its value. But Nowacki failed to provide anything to indicate the sale met the requirements of an open market transaction. Further, Nowacki did not offer any evidence of when the sale closed much less attempt to relate the sale price to the relevant valuation dates.
- e. Nowacki contends the subject property should be assessed at the same front foot rate as properties from another assessment neighborhood. But he offered nothing to compare the properties beyond conclusory statements that they were similar to each other. His evidence therefore fails to comply with generally accepted appraisal or assessment practices. *See Long*, 821 N.E.2d at 470; *see also Indianapolis Racquet Club v. Marion Co. Ass’r*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014).
- f. Because Nowacki offered no probative market-based evidence to demonstrate the subject property’s correct market value-in-use, he failed to make a prima facie case for lowering his assessments. Where a petitioner has not supported his claim with probative evidence, the respondent’s duty to support the assessment with substantial

evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2017 assessments.

ISSUED: March 21, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.